

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

...
Pronounced on : 22.08.2019
Reserved on : 15.07.2019

OA. 060/1575/2018
MAAs No. 060/18/2019, 060/71/2019 & 060/900/2019

...
CORAM:HON'BLE MR. SANJEEV KAUSHIK, MEMBER(J)
HON'BLE MR.A.K. BISHNOI , MEMBER(A)
...

Jagmohan Sharma S/o Late Shri Ram Chander, Aged 56 years, R/o House No. 394, Sector 10, Panchkula, presently posted as Divisional Forest Officer, Wildlife Headquarter, Office of Pr. Chief Conservator of Forest (Wildlife), Panchkula, Haryana-134109 (Group 'A').

...APPLICANT

BY ADVOCATE: **SH. ABHILAKSH GROVER**

VERSUS

1. Union of India through Secretary, Government of India, Ministry of Personnel, Public Grievances and Pensions, Department of Personnel & Training, North Block, New Delhi-110 001.
2. Union of India through the Secretary to Government of India, Ministry of Environment, Forest and Climate Change, Indira Paryavaran Bhawan, Jor Bagh Road, New Delhi – 110 003.
3. Union Public Service Commission through its Secretary, Dholpur House, Shahjahan Road, New Delhi- 110 001.
4. State of Haryana through Financial Commissioner & Principal Secretary to Government of Haryana, Department of Forests, Mini Secretariat, Sector 17, Chandigarh-160 017.
5. State of Haryana through Chief Secretary to Government of Haryana, Civil Secretariat, Haryana, Chandigarh-160 001.
6. Additional Chief Secretary, Government of Haryana, Department of Forests, Mini Secretariat, Sector 17, Chandigarh-160 017
7. Ranbir Singh Dhull, HFS, S/o Sh. Sardar Singh, O/o PCCF, Haryana, Van Bhawan, Panchkula-134109.

.....RESPONDENTS

BY ADVOCATE: **SH. SANJAY GOYAL FOR RESPDT.NO.1 & 2.**
SH. B.B. SHARMA FOR RESPDT. NO3.
SH. SAMARVEER SINGH FOR RESPDTS. No. 4-6

**SH. G.S. BAL, SR. ADVOCATE ALONG WITH MS.
MANDEEP KAUR, ADVOCATE FOR RESPDT. NO. 7**

ORDER

MR. A.K. BISHNOI, MEMBER(A):-

1. The applicant in the present OA has sought quashing of the proposal dated 22.10.2018 sent by respondents No. 4 to 6 to respondent No. 3 for reconvening the Selection Committee Meeting for promotion of Haryana Forest Service Officers to Indian Forest Service for the select list for years 2008-09, 2012, 2013 & 2015 respectively. The applicant pleads that his name has been illegally and arbitrarily not forwarded for consideration. The applicant further seeks direction to forward his name to UPSC along with ACR Dossiers with further direction to UPSC to consider him for promotion from Haryana Forest Service Officers to Indian Forest Service in the Selection Committee meeting.

2. The present matter has seen a series of litigation and it has been submitted by learned counsel for the applicant that the Hon'ble High Court of Punjab and Haryana has given direction to decide the application on 15.07.2019. This matter had earlier been agitated through different litigants in OA No. 153-HR-2013 titled **Jagmohan Sharma Vs. UOI & Ors.** which was challenged in the Hon'ble High Court and the matter was remitted back to the Tribunal vide order dated 27.09.2016 (Annexure A-4) for deciding the case afresh in accordance with law. Subsequently, vide order dated 15.02.2017, this Tribunal dismissed the OA as infructuous. It was further directed in this order that "in case a fresh proposal is sent by

the State of Haryana for the indicated posts, then the UPSC will naturally consider the eligibility of the officers as per the relevant rules, regulations, instructions and in accordance with law". Liberty was granted to the applicant to challenge any action of UPSC if he felt aggrieved through fresh OA.

3. Earlier, CWP No. 4891 of 2013 (O&M) titled **R.K. Sharma Vs. State of Haryana and others and other connected cases** were filed in the Hon'ble High Court of Punjab and Haryana relating to the issuance of the Select List regarding promotions from Haryana Forest Service to Indian Forest Service. The main point of these writ petitions was the interpretation of certain rules by the State of Haryana. After elaborate examination of the subject, the Hon'ble High Court passed the order dated 04.04.2014 stating as follows:-

"However, it was the order Annexure P.8 passed on 25.5.2011, which led to the filing of a number of writ petitions. Such order was passed without granting any opportunity of hearing to the officers thereby affecting their rights. Some of the Officers invoked the writ jurisdiction of this Court.. In CWP No. 21453 of 2010 filed by Shri Raj Kumar Jhangra, a direction was issued to decide his representation. In pursuance of the orders passed in some other writ petitions filed by the Officers aggrieved against the order dated 25.5.2011, the learned Additional Chief Secretary to Government of Haryana, again considered the dates from which the Officers are to be regularized and confirmed in service. Such order was passed on 5.11.2012. It is the said order, which is also subject matter of challenge in the present set of writ petitions.

In the order dated 25.5.2011, the State Government has modified the order regularizing the services of the promotee officers and the order of confirmation dated 16.11.2010 relying upon the instructions issued by the Chief Secretary on 15.12.1971 in respect of consequences of not passing the departmental examinations.....

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The Select Committee constituted under Regulation 3, held its meeting on 4.5.2011 for preparing a list of members of the State Forest Services suitable

for promotion for the vacancies which arose during the year 2008 and 2009. The Committee selected S/Shri O.P. Sharma, Ram Karan Sharma, Rajesh Kumar Gulia, Raj Kumar Bhatia as suitable for promotion against the vacancies of the year 2008, whereas in respect of 2009 vacancies, the Committee recommended the names of Malkiat Singh, Ved Parkash and Surinder Singh, as Officers suitable for promotion.

The order by the State Government passed on 25.5.2011 revised the date of regularization, resultantly; the promotee officers became ineligible for promotion for having less than 8 years of service to their credit in the State Forest Service. As a consequence thereof, the recommendations of the Select Committee were not accepted as the entire issue was required to be re-determined.

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Thus, we find that the orders passed by the Additional Chief Secretary on 25.5.2011 and 5.11.2012 are not sustainable in law. Consequently, the said orders are set aside, except to the limited extent of confirmation of the officers, who were not confirmed earlier in the above orders as discussed hereinafter.

Shri BIRTHAL, one of the promotee Officers was facing a departmental inquiry when the Select Committee made its recommendation on 4.5.2011. It was on 18.5.2011, the departmental proceedings against Shri BIRTHAL were dropped. Admittedly, a person junior to Shri BIRTHAL was considered by the Select Committee in its meeting on 4.5.2011. As a consequence of dropping of disciplinary proceedings against Shri BIRTHAL, he is entitled to be considered for appointment to the Indian Forest Service. Since he has not been considered, the Select Committee shall consider Shri BIRTHAL for appointment to the Indian Forest Service from the day his immediate junior was considered and recommended for appointment. Since the services of Shri BIRTHAL have been confirmed for the first time in the order dated 25.5.2011, and that such order of confirmation is not the subject matter of dispute by any person, therefore, though the orders dated 25.5.2011 and 5.11.2012, are not sustainable, but the same shall not affect the confirmation of the service of Shri BIRTHAL.

In view thereof, the recommendations of the Select Committee dated 4.5.2011, are required to be accepted by the State and Union Governments, subject to the consideration of the claim of appointment of Shri BIRTHAL from the day his junior has been recommended for appointment."

The matter was challenged before the Hon'ble Supreme Court in **Vijay**

Laxmi vs. State of Haryana & Ors. (SLP No. 14112/2014 with connected

SLPs), which were decided on 09.02.2015 in the following terms:-

"We accordingly make it clear that the observations made by the High Court in its order dated 04.04.2014 extracted in the earlier part of its order shall not be understood to be preventing the petitioner or for that matter any other party from challenging the recommendations of the Selection Committee dated 04.05.2011. We further make it clear that we have not expressed any

opinion on the merits of the contentions that may be urged in the fresh writ petition which the petitioner or any other party may file.

The Special Leave Petitions are disposed of with the above observations.”

4. Subsequently, one OA No. 060/1124/2017 was filed and on 20.09.2017 this Tribunal passed the following order:-

“Having heard the learned counsel for the parties, having gone through the record with their valuable assistance, and without expressing any opinion on merits, lest it may prejudice the case of either side, the main instant Original Application (OA) is disposed of with the direction to UPSC (respondent No. 2) to consider and decide the indicated matter of promotions to the post of IFS Cadre, within a period of two months from the date of receipt of certified copy of this order.”

Thereafter, following the non-compliance of this order, contempt proceedings were initiated vide CP No. 060/7/2018 filed by Sh. Partap Singh Birthal. In view of the submissions made by Additional AG that he is already in receipt of instructions that the earlier recommendations made qua the petitioner vide letters dated 09.11.2016 and 19.01.2017 to reconvene the review DPC in the case of the petitioner and other eligible persons, the CP was closed with the direction to the UPSC to convene a meeting of the Review DPC as per the directions of a court of law vide order dated 13.08.2018 by this Tribunal.

5. However, the petitioner in CP No. 07/2018 subsequently approached this Tribunal through MA No. 060/01908/2018 with a prayer to revive the CP No. 07/2018. In this MA, respondent No. 2, Principal Secretary to the Government of Haryana, Department of Forests, filed affidavit dated 29.01.2019 explaining that vide letter No. 5222-Ft-2-2016/21349 dated 09.11.2016, the State of Haryana has sent a list of eligible officers of 2008

and 2009. It was further stated that the case of the petitioner Partap Singh BIRTHAL was considered in reference to the Select List of 2009 in concurrence with the directions of the Hon'ble High Court to consider his name for appointment from the date his juniors have been recommended for this.

6. We have heard the learned counsel for the parties and have carefully gone through the pleadings on record and given full attention to the arguments advanced by the learned counsel from both sides.

7. There has been a multiplicity of litigation in the present matter involving the issues relating to different people. Some of these have been mentioned in detail above for the purpose of explaining the merit pursuant to the case relating to the relief sought by the applicant in the instant OA. The matter has large number of facts which are inter-connected and which are necessary to bring out the essential issues in relation to the applicant. In OA No. 153/HR/2013 while dismissing the OA filed by the applicant on 15.02.2017, this Tribunal had concluded that the State of Haryana could send a fresh Select List on the assumption that no Select List was pending with the UPSC and the UPSC could thereafter consider the matter afresh. It is also observed that if such a list is sent, the UPSC will inter alia consider and take a further action as per law. However, in **R.K. Sharma** (supra) vide order dated 04.04.2014, the Hon'ble High Court directed as follows:-

“In view thereof, the recommendations of the Select Committee dated 4.5.2011, are required to be accepted by the State and Union Governments, subject to the consideration of the claim of appointment of Shri BIRTHAL from the day his junior has been recommended for appointment.”

The order of the Hon'ble High Court of Punjab & Haryana has been challenged before the Hon'ble Supreme Court as mentioned in Para-3/above, in which the Hon'ble Supreme Court made it clear that the observations made by the Hon'ble High Court shall not be taken as to prevent the petitioner or for that matter any other party from challenging the recommendations of the Selection Committee dated 04.05.2011. However, the recommendations of the Selection Committee dated 04.05.2011 have not been challenged before the court of law. In view of this, it can reasonably be concluded that they have attained finality subject to such corrections as may be required consequent to the consideration of the claim of appointment of Shri Birthal in terms of the orders of the Hon'ble High Court dated 04.04.2014 and subject to the outcome of the final results in the CWPs as mentioned in para-14 of the minutes of the meeting of 04.05.2011 (Annexure A-10).

8. In the present OA, the applicant has sought the quashing of the proposal dated 22.10.2018 sent by respondents No. 4 to 6 to respondent No. 3 for reconvening the Selection Committee Meeting for select list for years 2008-09, 2012, 2013 & 2015 for promotion of Haryana Forest Service Officers to Indian Forest Service. This list is pertaining to a number of years which also includes the year 2008-2009, for which the applicant is seeking his consideration based upon the order of Hon'ble High Court dated 4.4.2014, where the minutes of meeting dated 4.5.2011 have attained finality. Since, the panel of State Forest Officers of 2008-2009, includes the name of the applicant, so it is alleged that any change in the

recommendation made on 4.5.2011 will amount to tinkering with the order dated 4.4.2014 of Hon'ble High Court and will also lead to contempt of court. It has also been alleged during the course of arguments that in C.P. No. 060/7/2018 filed by Sh. Birthal, learned counsel appearing on the behalf of State of Haryana had made a statement to the effect that "he has instruction to say that they will send recommendations dated 4.5.2011 to UPSC for consideration". It is alleged that once the recommendation dated 4.5.2011 has been considered and acted upon in case of Sh. Birthal, then why the same has not been acted upon in the case of the applicant. Once by acting upon the recommendations dated 4.5.2011, name of Sh. Birthal has been considered, then the name of other officers whose name have also been recommended in that list be also considered particularly the name of the applicant against the select list of 2008-09.

9. It has further been alleged that any change, due to subsequent events will not have any effect on the recommendation dated 4.5.2011 as it has attained finality qua the persons included in that list. Thus, it is prayed that the UPSC be directed to consider the recommendations dated 4.5.2011, qua him also.

10. Though the facts are quite lengthy and interesting, but a close look would make it more than clear that his short prayer is to give effect to the recommendations dated 4.5.2011, as has been done in the case of Mr. Birthal. For that the recommendation contained in letter dated 4.5.2011 reads as under:-

"SELECT LIST OF 2008

10.1 The Committee were informed that the maximum number of State Forest Service Officers who may be included in the Select List is 04 (four) against 04 (four) vacancies in the promotion quota of the State Cadre arising during 2008 as determined by the Central Government in terms of Rule 4 (3)(b) of the IFoS (Recruitment) Rules 1966 read with Regulation 5 (1) of the IFoS (Appointment by Promotion) Regulations, 1966.

10.2 The Committee examined the records of the officers (whose names are included in Annexure-I), who fulfilled the conditions of eligibility, up to the year 2007-08. On an overall relative assessment of their service records, the Committee assessed them as indicated against their names in Annexure-I.

10.3 On the basis of the above assessment, the Committee selected the officers whose names are mentioned below, as suitable for promotion to the Indian Forest Service and placed them in the following order:-

Sl. No.	Name of the officer (S/Shri)	Date of birth
1.	O.P. Sharma	12.07.1955
2.	Ram Karan Sharma	15.04.1956
3.	Rajesh Kumar Gulia	30.01.1959
4.	Raj Kumar Bhatia	01.11.1959

SELECT LIST OF 2009

11.1 The Committee were informed that the maximum number of State Forest Service Officers who may be included in the Select List is 03 (three) against 03 (three) vacancies in the promotion quota of the State Cadre arising during 2009 as determined by the Central Government in terms of Rule 4 (3)(b) of the IFoS (Recruitment) Rules, 1966 read with Regulation 5 (1) of the IFoS (Appointment by Promotion) Regulations, 1966.

11.2 The Committee examined the records of the officers (whose names are included in Annexure-II), who fulfilled the conditions of eligibility, up to the year 2008-09. On an overall relative assessment of their service records, the Committee assessed them as indicated against their names in Annexure-II.

11.3 On the basis of the above assessment, the Committee selected the officers whose names are mentioned below, as suitable for promotion to the Indian Forest Service and placed them in the following order:-

Sr. No.	Name of the officer (S/Shri)	Date of birth
1.	Malkiat Singh (OBC)	25.10.1960
2.	Ved Prakash (SC)	27.10.1960
3.	Surinder Singh	03.10.1958

Needless to mention over here that in Annexure-I attached with SCM minutes (Annexure A-10), the name of applicant is at Sr. No. 10 for the year 2008 and in Annexure II, it is at Sr. No. 6, for the year 2009.

11. The recommendation dated 4.5.2011 has attained finality, as per the order dated 4.4.2014 of the Hon'ble High Court, as there has not been any challenge to it in higher fora. The plea of the State that much water has flown down the river, after recommendation dated 4.5.2011, as seniority has gone under change, since then and as such claim of applicant is futile, cannot be accepted, as if the State plea is accepted, then it would violate the sanctity of order of Hon'ble High Court more particularly when State has itself made a statement recently in the year 2018 itself, to give effect to the recommendations dated 4.5.2011.

12. Mr. BIRTHAL had filed a CWP No.20155 of 2019 (O&M) against order dated 19.2.2019 in M.A. No. 060/01908/2018 in C.P. No. 060/00007/2018 in O.A. No. 060/01124/2017, for revival of C.P. In that case also the recommendations dated 4.5.2011 had cropped up. The junior to applicant (therein) could not be recommended for appointment against 2008, so he could also not find a place. Thus, court found that necessary compliance of earlier directions of this Court had been made. The Hon'ble High Court has dismissed the CWP on 24.7.2019, on the premise that respondents were directed to consider his case for promotion from the date junior was so recommended for appointment, which process was done.

13. To recapitulate, the applicant has sought quashing of the letter dated 22.10.2018 (Annexure A-9) sent by the State of Haryana for reconvening the SCM meeting for the select list, inter-alia, for 2008-2009 as the same does not contain his name and to command them to send his name to UPSC (Respondent No.3) along with his ACR dossiers (more so when his overall grading could not be downgraded to "Very Good", without giving any reasons), in consonance with recommendation of SCM dated 4.5.2011 and the indicated decision of the Hon'ble High Court contained in order dated 4.4.2014.

14. In the background of aforesaid factual and legal aspect of the matter, we are of the considered opinion that the action of the State Government in not forwarding the names, in consonance with the recommendation dated 4.5.2011 of the UPSC in case of the applicant herein, is not in accord with the judgment dated 4.4.2014 of Hon'ble High Court and the action to that extent cannot be sustained in the eyes of law. In the wake of these facts, the State Government is directed to act upon the recommendations dated 4.5.2011, qua the applicant, against the vacancies for the years 2008-2009 only, which was in issue in earlier indicated lis. It goes without saying that the State would be free to make recommendations, as per subsequent developments, by sending names of eligible officers, against vacancies for the years 2010 onwards. The UPSC is also advised to examine the indicated recommendations dated 4.5.2011, for appointment to IFS, qua select list for the years 2008-2009, in accordance with relevant rules and regulations, and in terms of the above-mentioned order of the Hon'ble High

Court, and if applicant is found to be eligible therefor, as per his position, extend him the due benefits. The O.A. is disposed of accordingly. No order as to cost.

(A.K. BISHNOI)
MEMBER(A)

(SANJEEV KAUSHIK)
MEMBER(J)

Dated:

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